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No. 02-116

In The

Supreme Court of the United States

HECTOR P. GONZALEZ,

Petitioner,

vs.

HONORABLE JOHN J. SPECIA, JR.

On Petition For A Writ Of Certiorari To The Supreme Court Of Texas

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW
(Restated)

It is the contention of the Petitioner that the trial court below denied him due process rights under the Fifth and Fourteenth Amendments of the U.S. Constitution by the following actions:

1. by unilaterally reinstating sanctions orders which had been vacated over 200 days previously;

2. by holding him in contempt for failure to pay monetary sanctions that had been set aside by an order granting a new trial and vacating those sanctions but which were *sus ponte* [sic] reimposed by the trial court below without a written motion before the court, without any notice that a hearing was to be held concerning said issue;

3. by continuing to take actions against Petitioner after said court had lost jurisdiction over the subject matter and over the Petitioner by the Petitioner having appealed these matters to the Fourth Court of Appeals;

4. by ordering the imprisonment of Petitioner for debt in violation of Article I, Section 18 of the Texas Constitution;

5. by refusing Petitioner, an officer of the Court, the right to have another judge appointed to determine his guilt or innocence.

CORPORATE DISCLOSURE STATEMENT

CMH Homes, Inc. is a corporation organized and existing under the laws of the State of Tennessee. CMH has no parent corporations and no publicly held company owns more than ten percent (10%) of the stock in CMH.

Vanderbilt Mortgage and Finance, Inc. (hereafter "VMF") corporation organized and existing under the laws of the State of Tennessee. VMF is a wholly owned subsidiary of CMH Homes, Inc.

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STATEMENT OF THE CASE

Suit was originally filed in Cause Number 99CI05831 (hereafter referred to as "the first suit") styled *Sheila and Isidra Garza* (hereafter referred to as "Plaintiffs") *vs. Crest Ridge Homes, Inc. and CMH Homes, Inc. and Vanderbilt Mortgage and Finance, Inc.* (hereafter referred to, collectively, as "CMH") on or about April 22, 1999 by attorney Randolph V. Gonzales,[1] although CMH was not served for a lengthy period of time after that and did not file their Original Answer until June 12, 2000.

On or about August 31, 2000, the Plaintiffs were served with notice of CMH's intention to depose them. Because of a conflict with the schedule of Randolph Gonzalez, the depositions were rescheduled by agreement to be taken on October 16, 2000. Four days prior to that date, on or about October 12, 2000, Randolph Gonzalez notified the undersigned attorney that Hector P. Gonzalez had been retained by the Relators and filed 1) Motion to Substitute Counsel and 2) Motion to Quash Depositions of Isidra Garza and Sheila Garza. The undersigned and Randolph Gonzalez then entered into an Agreed Order on Motion to Quash which ordered the Relators to appear for their depositions on November 1, 2000.

On or about October 20, 2000, the undersigned notified Hector P.[2] Gonzalez, by certified mail return receipt

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[1] Both Randolph Gonzales and Hector Gonzales have stated that there is no relationship, familial or otherwise, between them, and CMH has no reason to believe otherwise.

[2] All further references to an attorney Gonzalez shall be to Hector P. Gonzalez, attorney for the Petitioner in this cause.

requested, of the entry of the Agreed Order on Motion to Quash, and at the same time furnished him with a copy of same. However, neither Mr. Gonzalez or his clients appeared for the depositions which were to have been taken, by order of the Court, on November 1, 2000.

After the Relators violated the orders of the Court, by failing to appear for their depositions on November 1, 2000, CMH filed a Motion for Sanctions and Motion to Compel which was heard on November 20, 2000. At that hearing, Mr. Gonzales acknowledged that he had no evidence that he made any effort to cancel the November 1 depositions. The Court informed Mr. Gonzalez that he could file a Motion for Reconsideration if he came up with proof of an attempt to cancel the depositions. No such Motion for Reconsideration has ever been filed.

The trial Court ordered the Plaintiffs to present themselves for deposition on the 24th day of November, 2000, a date agreed to by the Petitioner, Hector P. Gonzalez. The Court also ordered the Plaintiffs and Hector P. Gonzalez to pay four thousand dollars ($4,000) in attorney's fees as sanctions on or before 5:00 p.m. on 20th day of January, 2001.

Neither the Plaintiffs or Hector P. Gonzalez appeared for the depositions on November 24, 2000 as ordered by the Court. Neither did they pay the attorney's fees as ordered by the Court.

CMH then filed their Second Motion for Sanctions and Motion to Compel which was heard on December 11, 2000. Neither the Plaintiffs nor their attorney appeared. At that hearing, the trial Court found that the Appellants had failed to comply with at least two previous orders of the Court, struck the pleadings of the Plaintiffs, and ordered

the plaintiffs and their attorney to pay an additional five thousand dollars ($5,000.00) in attorney's fees as sanctions.

The Plaintiffs then filed a Motion for New Trial which was heard on February 12, 2001. The Petitioner alleged, as a basis for his request for a new trial, that his failure to appear at the hearing on December 11 was due to a conflicting trial setting in Victoria, Texas, claiming to have filed a Motion for Continuance apprising the Court of this trial setting. At the February 12 hearing, Judge Specia noted that the Motion for Continuance 1) was filed the day after the December 11 hearing and 2) only included two of six referenced pages. Judge Specia also noted "total incompetence on [the Petitioner's] part."

Judge Specia denied the Motion for New Trial and ordered the Petitioner to pay an additional sum of three thousand, two hundred dollars ($3,200) as court costs and attorney's fees.

As a result of the Petitioner's failure to pay the attorney's fees as ordered by the Court on November 20 and December 11, CMH filed a motion for contempt which was heard on February 20, 2001. At that hearing, Petitioner informed the Court that he intended to pay the court-ordered fees within thirty days and acknowledged "the mistakes are mine," as opposed to those of the Plaintiffs.

The Petitioner filed a second Motion for New Trial (although it was not identified as such) which was set for hearing on April 3, 2001. CMH was not given proper notice of the hearing on the second Motion for New Trial and consequently did not appear. A new trial was granted.

CMH filed a Motion for Rehearing, seeking to have the order granting a new trial overturned. Concurrently

with the filing of the Motion for Rehearing in the first suit, CMH filed their Third Motion for Sanctions and Second Motion for Contempt.

The Third Motion for Sanctions and Second Motion for Contempt was first set for hearing before Judge Specia on October 1, 2001. As a result of the October 1 hearing, Judge Specia entered, in the first suit, his Order *Nunc Pro Tunc* Setting Aside Grant of New Trial[3] in which he found 1) that CMH was not given proper notice of the hearing on the second Motion for New Trial, 2) that CMH had previously filed a Motion for Rehearing in this cause of action and 3) that the order of the court dated April 3, 2001, should be set aside for all purposes.

The Third Motion for Sanctions and Second Motion for Contempt was continued until January 9, 2002. At that time, the trial Court found the Petitioner had willfully disobeyed the orders of the Court and was therefore in contempt of court. The trial Court gave the Petitioner an additional length of time, until January 21, 2002, to purge himself of contempt and ordered that he was to be confined if he had failed to do so by that time. It is this order of contempt of which the Petitioner complains.

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[3] Appendix 14 to the Petition for Writ of Certiorari is the Order Setting Aside Grant of New Trial. This order, as the result of a clerical error, did not recite that the order granting new trial was set aside. As a result, CMH filed their Motion for Entry of Order *Nunc Pro Tunc*. *See* Appendix 17. The Court then entered its Order *Nunc Pro Tunc* Setting Aside Grant of New Trial, not included in the Petitioner's appendix, which stated that the Order Setting Aside Grant Of New Trial was set aside for all purposes.

ARGUMENTS AND AUTHORITIES

There is no compelling reason for this Court to grant the Petitioner's writ. *See* Rule 10.[4] This cause does not arise from a United States Court of Appeals. There is no conflict between state courts of last resort and there is no important question of federal law that should be settled by this Court.

Neither has the Petitioner shown a basis for this Court's jurisdiction. The Petitioner has failed to comply with Rule 14(1)(g)(i) in that he has failed to state when any alleged federal question sought to be reviewed was raised, the method or manner in which it was raised and/or the way in which such alleged question(s) was passed upon by the lower courts. Neither has the Petitioner included in his appendix any pleadings, motions, etc., showing that any federal question was ever raised or presented before the lower courts.[5]

The failure of the Petitioner to present any federal question to the lower courts and/or to present this Court with a record which establishes the jurisdiction of this Court is fatal to his petition. This Court "will not consider a petitioner's federal claim unless it was either addressed by, or properly presented to, the state court that rendered the decision we have been asked to review," *Adams vs. Robertson*, 520 U.S. 83, 86, 117 S. Ct. 1028, 1029, 137

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[4] All references to a Rule is a reference to the Rules of the Supreme Court of the United States unless otherwise stated.

[5] The Petitioner has not raised any federal question before the lower courts including, but not limited to, the Fifth, Tenth and/or Fourteenth Amendments to the Constitution of the United States of America.

L. Ed. 2d 203, 208 (1997) *citing Heath vs. Alabama,* 474 U.S. 82, 87, 88 L. Ed. 2d 387, 106 S. Ct. 433 (1985); *Illinois vs. Gates,* 462 U.S. 213, 217-219, 76 L. Ed. 2d 527, 103 S. Ct. 2317 (1983); *McGoldrick vs. Compagnie Generale Transatlantique,* 309 U.S. 430, 434, 84 L. Ed. 849, 60 S. Ct. 670 (1940).

Likewise, "at the minimum ... there should be no doubt from the record that a claim under a *federal* statute or the *Federal* Constitution was presented in the state courts and that those courts were apprised of the nature or substance of the federal claim at the time and in the manner required by the state law," *Bankers Life and Casualty vs. Crenshaw*, 486 U.S. 71, 78, 108 S. Ct. 1645, 1650, 100 L. Ed. 2d 62, 72 (1988) *citing Webb vs. Webb*, 451 U.S. 493, 501, 68 L. Ed. 2d 392, 101 S. Ct. 1889 (1981). Rather than furnishing this Court with a record from which there can be no doubt that a claim under the Constitution or a federal statute was presented in the courts below, the Petitioner has failed to produce a record from which either the Court or the Respondent can determine the method, manner, or timing of the presentation of any alleged federal questions or any decision regarding any alleged federal questions by the courts below..

The ruling of the Supreme Court of Texas[6] states only that the Petitioner's writ of habeas corpus was denied. There is no indication in such ruling, or in anything else presented to this Court by the Petitioner, that the Supreme Court of Texas passed on any federal question. "When the highest state court has failed to pass upon a

[6] Appendix 1 to Petition for Writ of Certiorari.

federal question, it will be assumed that the omission was due to want of proper presentation in the state courts, unless the aggrieved party in this Court can affirmatively show the contrary," *Exxon vs. Eagerton*, 462 U.S. 176, 182, 103 S. Ct. 2296, 2301, 76 L. Ed. 2d 497, 505 (1983). The Petitioner has not even attempted to show that any federal question was presented to and/or passed on by the state courts.

The Respondent does not believe that it is necessary to address the "merits" of the Petition for Writ of Certiorari due to the fact that this Court is clearly without jurisdiction, for the reasons set forth above. However, out of an abundance of caution, the Petitioner will address the "substantive" issues raised by the Petitioner. The Respondent will not attempt to address the grooming habits of the lower courts or the Petitioner's alleged status as a gadfly.

The Petitioner first claims lack of notice in some form. However, again, the Petitioner fails to inform us of what notice he claims to have been entitled to, how such notice was deficient and/or how he raised or presented this issue to the lower courts. In fact, the Petitioner did receive notice, did not object to the claimed lack of notice at any stage of the proceedings before the trial court, and the only evidence regarding notice presented to the Texas appellate courts indicated that the Petitioner did receive notice.

In their Third Motion for Sanctions and Second Motion for Contempt, the Respondent referenced his

Motion for Rehearing[7] and advised the Petitioner that the Respondent of their intention "to have all of the referenced motions heard by the same judge at the same time." In fact, the Petitioner acknowledged this request in one of his pleadings[8] in which the Petitioner quoted *verbatim* Paragraph 25 of the Respondent's Third Motion for Sanctions and Second Motion for Contempt as follows:

> "It is the intention of the Defendants to have all of the referenced motions heard by the same judge at the same time. It is anticipated that the Court will find that the order purporting to grant a new trial is a nullity and/or set such order aside. However, out of an abundance of caution, the Plaintiffs request, again, that the Court enter a default judgment against the Plaintiffs and in favor of the Defendants."

The Petitioner next launches into several ill-defined arguments relating to the alleged failure of the courts of Texas to properly apply the laws of the State of Texas. This Court is "not free to substitute our own interpretations of state statutes for those of a State's courts," *Schad vs. Arizona*, 501 U.S. 624, 636, 111 S. Ct. 2491, 2499, 115 L. Ed. 2d 555, 568 (1991). The decision of a state's highest court on issues of state law is binding on this Court. *See California vs. Freeman*, 488 U.S. 1311, 109 S. Ct. 854, 102 L. Ed. 2d 957 (1989); *Mullaney vs. Wilbur*, 421 U.S. 684, 95 S. Ct. 1881, 44 L. Ed. 2d 508 (1975); *R.A.V. vs. St. Paul*,

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[7] It was this motion that resulted in the setting aside of the grant of new trial regarding which the Petitioner alleges that he did not receive notice.

[8] Motion to Dismiss Third Motion for Sanctions and Second Motion for Contempt for Lack of Jurisdiction.

505 U.S. 377, 112 S. Ct. 2538, 120 L. Ed. 2d 305 (1992); *Estate of Thorton vs. Caldor*, 472 U.S. 703, 105 S. Ct. 2914, 86 L. Ed. 2d 557 (1984).

The Petitioner alleges, for the first time, denial of due process citing *Hagar vs. Reclamation Dist.*, 111 U.S. 701, 708, 4 S. Ct. 663, 28 L. Ed. 569 (1884) and *Hurtado vs. California*, 110 U.S. 516, 4 S. Ct. 111, 28 L. Ed. 2d 232 (1994). The Petitioner does not inform us of how or what manner these cases show that his due process rights were violated.

That portion[5] of *Hagar* alluded to by the Petitioner refers to the right to notice and an opportunity to be heard. As set forth above, the Petitioner has not shown either that he failed to receive notice or that he has preserved any error in that regard. Without further enlightenment by the Petitioner, the Respondent can only state that the Petitioner received notice of all hearings in question and that the Petitioner was held in contempt only after several hearings over a period of months during which he was represented by an attorney.

That portion[6] of the *Hurtado* decision referenced by the Petitioner speaks in broad terms of the right to life, liberty and property. The Petitioner does not attempt to enlighten us as to how this supports his position or how his right to life, liberty or property was unconstitutionally taken from him.

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[5] In the cite to the *Hagar* decision, the Petitioner references page 708.

[6] Page 537.

SUMMARY OF THE ARGUMENT

The Petitioner has presented no compelling reasons for the granting of his petition. The Petitioner has not made a direct and concise argument amplifying the reasons relied on for allowance of the writ as required by Rule 14(1)(h).

Likewise, the Petitioner has set forth no basis for this Court's jurisdiction and has wholly failed to preserve or present any federal question as required by Rule 14(1)(g)(i).

Rather than setting forth his "arguments" with accuracy, brevity and clarity, as required by Rule 14(4), the Petitioner has merely set forth a rambling and incomprehensible discourse in which he has improperly criticized the judges and justices below for their grooming habits.

WHEREFORE, the Respondent respectfully requests that this Honorable Court deny the Petition for Writ of Certiorari and for such other and further relief, both at law and in equity, to which the Plaintiff may be justly and legally entitled.

Respectfully Submitted,

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